



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, CA 93940

October 5, 2007

Mr. John Connell
California Department of Food & Agriculture
Director
Plant Health and Pest Prevention Services
1220 N Street, Room A-316
Sacramento, California 95814

Dear Mr. Connell,

The Monterey Bay National Marine Sanctuary (Sanctuary) has received your permit application for the potential discharge of the light brown apple moth pheromone product Checkmate LBAM-F to Sanctuary waters, dated October 4, 2007.

While the timeline and dynamic geographic scope of the project led to some initial procedural issues, we appreciate your agency's subsequent efforts to communicate and provide requested information. From the outset, we have appreciated the importance of stopping the spread of invasive species and CDFA's use of a pheromone based product over a traditional pesticide.

However, any direct discharge to the Sanctuary requires a permit. While CDFA maintains that no direct discharge has occurred or will occur, the Sanctuary's own monitoring and aerial dispersal modeling¹ indicates that some discharge is probable given the operational details of the project. We believe that a permit is required and appreciate your application.

Since the initial spraying in September, we have arranged for 48 hour acute toxicity tests using mussel embryos to be conducted at the University of California at Davis' Granite Canyon Marine Pollution Studies Laboratory. These tests indicate that the product is non-toxic to marine life. Therefore, we find any impact that may occur from discharge resulting from CDFA's operation as described in the July 2007 revised Environmental Assessment, to be short term and negligible.

A permit that covers the Marina, Seaside, and Monterey Peninsula area accompanies this letter. It must be signed and returned to us in advance of operations in order to be considered valid. This permit does not include the Santa Cruz or Elkhorn Slough areas. Please be advised that these areas provide a refuge for many species of seabirds and marine mammals. These species may be sensitive to disturbance by low-flying aircraft, and as a result these areas are further protected by Overflight Restriction Zones. Expansion of your project into these areas will require additional evaluation and permitting requirements.

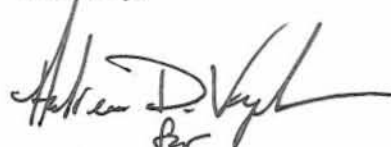
Once you have developed a complete proposal describing operations at these locations, please send the additional information to our office and request a permit amendment to include the additional scope of your project.

¹ AG-DISP, AG-DRIFT



If you have any questions regarding this matter, please contact Ms. Deirdre Hall in the MBNMS office by phone at 831-647-4207 or via email at deirdre.hall@noaa.gov. Thank you for your continued cooperation with the Monterey Bay National Marine Sanctuary.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Michel". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

PAUL MICHEL
Superintendent



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Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, California 93940

MONTEREY BAY NATIONAL MARINE SANCTUARY FURTHER NATURAL RESOURCE VALUE PERMIT

Permittee:

Mr. John Connell
California Department of Food & Agriculture
1220 N Street
Room A-316
Sacramento, CA 95814

Permit Number: MBNMS-2007-024

Effective Date: October 5, 2007

Expiration Date: July 24, 2010

Project Title: Eradication Treatment for the Light Brown Apple Moth

This permit is issued for activities in accordance with the National Marine Sanctuaries Act (NMSA), 16 USC §1431 *et seq.*, and regulations thereunder (15 CFR Part 922). All activities must be conducted in accordance with those regulations and law. No activity prohibited in 15 CFR Part 922 is allowed except as specified in the activity description below.

Subject to the terms and conditions of this permit, the National Oceanic and Atmospheric Administration (NOAA) National Marine Sanctuary Program hereby authorizes the permittee listed above to conduct general activities within Monterey Bay National Marine Sanctuary (MBNMS or sanctuary). All activities are to be conducted in accordance with this permit and the permit application received October 04, 2007. The permit application is incorporated into this permit and made a part hereof; provided, however, that if there are any conflicts between the permit application and the terms and conditions of this permit, the terms and conditions of this permit shall be controlling.

PERMITTED ACTIVITY DESCRIPTION:

The following activities are authorized by this permit:

Discharging light brown apple moth pheromone material into the Monterey Bay National Marine Sanctuary. No further disturbance of the cultural or natural resources of the sanctuary is allowed.

PERMITTED ACTIVITY LOCATION:

The permitted activity is allowed only in the following location(s):

The coastal areas of Marina, Seaside, and the Monterey Peninsula, within the Monterey Bay National Marine Sanctuary.

This permit does not allow for discharge of material in the vicinity of Santa Cruz or the Elkhorn Slough area.



In addition to the terms above, the following terms and conditions apply to this permit:

SPECIAL CONDITIONS:

1. The permittee is authorized to discharge moth pheromone material into the MBNMS as described in the application dated October 4, 2007 and the accompanying materials including National Environmental Policy Act analysis dated July 2007. No other discharges are permitted.
2. This permit is valid for intermittent operations, which are planned to be conducted over a three-year period as part of the Light Brown Apple Moth eradication efforts.
3. The permittee shall use precautionary buffer zones as described in the "Light Brown Apple Moth Workplan" when operating adjacent to the MBNMS to ensure that only a minimal amount of moth pheromone material enters Sanctuary waters.
4. The permittee shall continue to conduct monitoring consistent with California Department of Food & Agriculture protocols to determine application efficacy and avoidance of sensitive waters.
5. The permittee shall submit a brief report of all activities conducted under this permit to the MBNMS Permit Coordinator no later than 30 days after each application of moth pheromone, including areas sprayed, problems encountered, drift patterns, application efficacy, monitoring results, etc. This report can be submitted via email if desired.
6. This permit may be revoked at any time should the MBNMS Superintendent find that the moth pheromone material is causing or may cause unacceptable harm to sanctuary resources or qualities.
7. This activity may also require permission from other agencies. The enclosed permit is not valid until all other necessary permits and/or authorizations are obtained.

GENERAL CONDITIONS:

1. Within 30 (thirty) days of the date signed by the sanctuary official the permittee must sign and date on the appropriate line below for this permit to be considered valid. Once signed and dated, the permittee must ensure that the persons listed below each receive a signed original within 35 (thirty-five) days of the date signed by the sanctuary official:

Deirdre Hall
Permit Coordinator
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, CA 93940


David Bizot
National Permit Coordinator
NOAA National Marine Sanctuary Program
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910

2. It is a violation of this permit to conduct any activity authorized by this permit prior to the sanctuary official having received a permit with the permittee's original signature on the appropriate line below. The permittee must contact the sanctuary office to ensure the requisite documentation has been received before conducting any activity authorized by this permit.
3. This permit may only be amended by the National Marine Sanctuary Program. The permittee may not change or amend any part of this permit at any time. The terms of the permit must be accepted in full, without revision; otherwise, the permittee must return the permit to the sanctuary office unsigned with a written explanation for its rejection. Amendments to this permit must be requested in the same manner the original request was made.
4. All persons participating in the permitted activity must be under the supervision of the permittee, and the permittee is responsible for any violation of this permit, the NMSA, and sanctuary regulations for activities conducted under, or in junction with, this permit. The permittee must assure that all persons performing activities under this permit are fully aware of the conditions herein.
5. This permit is non-transferable and must be carried by the permittee at all times while engaging in any activity authorized by this permit.
6. This permit may be suspended, revoked, or modified for violation of the terms and conditions of this permit, the regulations at 15 CFR Part 922, the NMSA, or for other good cause. Such action will be communicated in writing to the applicant or permittee, and will set forth the reason(s) for the action taken.
7. This permit may be suspended, revoked or modified if requirements from previous National Marine Sanctuary Program permits or authorizations issued to the permittee are not fulfilled by their due date.
8. Permit applications for any future activities in the sanctuary or any other sanctuary in the system by the permittee might not be considered until all requirements from this permit are fulfilled.
9. This permit does not authorize the conduct of any activity prohibited by 15 CFR § 922, other than those specifically described in the "Permitted Activity Description" section of this permit. If the permittee or any person acting under the permittee's supervision conducts, or causes to be conducted, any activity in the sanctuary not in accordance with the terms and conditions set forth in this permit, or who otherwise violates such terms and conditions, the permittee may be subject to civil penalties, forfeiture, costs, and all other remedies under the NMSA and its implementing regulations at 15 CFR Part 922.
10. Any publications and/or reports resulting from activities conducted under the authority of this permit must include the notation that the activity was conducted under National

Marine Sanctuary Permit MBNMS-2007-024 and be sent to the sanctuary official listed in general condition number 1.

11. This permit does not relieve the permittee of responsibility to comply with all other federal, state and local laws and regulations, and this permit is not valid until all other necessary permits and/or authorizations are obtained. Particularly, this permit does not allow disturbance of marine mammals or seabirds protected under provisions of the Endangered Species Act, Marine Mammal Protection Act, or Migratory Bird Treaty Act. Authorization for incidental or direct harassment of species protected by these acts must be secured from the U.S. Fish and Wildlife Service and/or NOAA Fisheries, depending upon the species affected.
12. The permittee shall indemnify and hold harmless the National Marine Sanctuary Program, NOAA, the Department of Commerce and the United States for and against any claims arising from the conduct of any permitted activities.
13. Any question of interpretation of any term or condition of this permit will be resolved by NOAA.

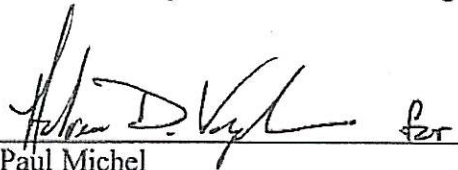
Your signature below, as permittee, indicates that you accept and agree to comply with all terms and conditions of this permit. This permit becomes valid when you, the permittee, countersign and date below. Please note that the expiration date on this permit is already set and will not be extended by a delay in your signing below.



Mr. John Connell
California Department of Food & Agriculture

10-5-07

Date



Paul Michel
Superintendent
Monterey Bay National Marine Sanctuary

10-5-2007

Date